

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-140

March 30, 1999

CENTRAL MAINE POWER COMPANY
Appeal of Consumer Assistance Division
Decision #1998-5843 Regarding
Linda Dexter - Goodyear Commercial Tire

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

Summary

In this Order we grant the appeal of Central Maine Power Company of the Consumer Assistance Division decision related to a complaint from Goodyear Commercial Tire.

Background

In July of 1998, Goodyear Commercial Tire (Goodyear) complained to the Consumer Assistance Division (CAD) about a back billing CMP had made for previously unmetered usage. CMP had discovered a mistake in the way Goodyear's meter had been connected, resulting in only 2 phases of 3 phases of service being measured by the meter. The meter had incorrectly measured usage from March 4, 1996 through April 13, 1998. Upon discovering the mistake in a routine inspection, CMP corrected the problem and now seeks to recover \$20,104.74 from Goodyear for unbilled electric service.

CMP admits that its meter technician made an error. A CMP energy service advisor generated a service order to have Goodyear's reactive meter removed, as its level of usage did not warrant the use of a second meter. On February 29, 1996, a technician removed the meter. A second technician performed a follow-up inspection five days later. This technician left open a set of test switches. Leaving a phase of service open caused that phase (approximately 1/3 of the bill) not to be measured by the meter. The person who paid the bills for Goodyear told CAD she did not notice the drop in usage and never questioned the bill.

The CAD decided the dispute on February 24, 1999. CAD found the customer was not responsible for the bill because it was not reasonable to expect a customer to have the technical knowledge to know that the reduced bill was due to CMP's failure to properly connect the meter and because it was reasonable to assume that a customer would not know that removing the meter could affect the amount of usage and the bill. CAD concluded that because the error was the result of CMP's negligence, CMP should absorb the unbilled amount.

On March 3, 1999, CMP appealed the CAD decision to the Commission. CMP argues that its terms and conditions, section 12.6(b), allow the Company to bill for such an error:

When the Company determines that it has under-billed a nonresidential customer because the test of that customer's meter reveals the meter's average accuracy to be more than four percent (4%) low, or because the Company discovers that the meter records have been switched or because of other reasons except for unauthorized use or fraud by the customer, the Company may issue a make-up bill for the unbilled charges for the previous twelve (12) months, or the actual period of error if the actual period can be determined.

They further argue that a customer's ability to recognize an under-billing is not required by the term and condition.

III. DECISION

We agree that section 12.6(b) of CMP's terms and conditions governs this situation. CMP may issue a make-up bill for unbilled charges for the period of the error.

We note that this case is distinguishable from a recent appeal involving a commercial customer in Bangor Hydro-Electric Company's service territory. Docket No. 97-398, *Bangor Hydro-Electric Company Appeal Of Consumer Assistance Division Decision #1158 Regarding Wooden Boat* (Welch, T., dissenting). In that case, BHE had no term and condition similar to CMP's. It sought to have a commercial customer pay for six years of past usage, where the meter had been incorrectly connected from the first day of service. Because neither BHE's tariffs or our rules directly addressed BHE's authority to collect the amount, we examined the equities of the situation and determined that it was unreasonable to charge a customer when the customer had no way of knowing its bill was inaccurate.

In this case, we need not reach the issue of the customer's knowledge of the decrease in usage because the terms and conditions allow CMP to collect the past amount owed. We note, however, that it is reasonable to assume that a business would notice a 1/3 decrease in its bills, when it has not changed its usage. Such a business has a duty to inquire about the change, or it runs the risk that if a problem is found in its meter, it will be expected to pay for the previously unpaid electricity it used.¹

¹With respect to the equities of this matter, two other points warrant brief mention. First, the customer received the electricity for which it is being billed, and absent some element of unfairness to the customer, a contrary decision by us in its obligation to pay would arguably give it a windfall. Second, there is no evidence that if the erroneous bills had been accurate, the customer would have taken steps to reduce its consumption. We are not aware that the customer took such steps during the many years it was being billed at the correct rate. Furthermore, with respect to the erroneous

With regard to the amount owed, CMP estimated that Goodyear owed \$20,104.74. It is unclear how CMP derived this precise amount. We remand to CAD to determine an appropriate estimate of the unbilled usage. Average usage for the twelve months previous to the error occurring, less 5-10%, times the rate in effect during the time period of the error, would likely be reasonable. CAD should take into account any deviation from the average that can be documented by Goodyear.

Dated at Augusta, Maine this 30th day of March, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

bills, the customer indicated that it never even noticed the drop in usage on the bills or questioned the bills in any way, giving rise to the inference that its consumption of electricity was not a significant factor for the customer.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.